

Nos. 77-1067 and 77-1078

Supreme Court, U. S.

FILED

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MICHAEL BODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

LOS ANGELES COUNTY, ET AL., APPELLANTS

v.

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA,
ET AL.

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA,
ET AL., APPELLANTS

v.

JUANITA M. KREPS, SECRETARY OF COMMERCE, ET AL.

*ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE CENTRAL DISTRICT
OF CALIFORNIA*

**MEMORANDUM FOR THE
SECRETARY OF COMMERCE**

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**MEMORANDUM FOR THE
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The appellants in these two cases have taken separate appeals from the same district court order. The Secretary of Commerce has also taken an appeal from that order, which has been docketed in this Court as No. 77-1271. We discuss the proceedings below and the questions presented by the district court's order in our Jurisdictional Statement filed in No. 77-1271 on March 13, 1978.

(1)

On November 2, 1977, the United States District Court for the Central District of California declared unconstitutional Section 103(f)(2) of the Public Works Employment Act of 1977, Pub. L. 95-28, 91 Stat. 116, to be codified at 42 U.S.C. 6705(f)(2), and enjoined the Secretary of Commerce and the appellant political subdivisions of the City and County of Los Angeles from enforcing the statute in the future. Los Angeles County and the other political subdivisions have appealed from the portion of the district court's order declaring Section 103(f)(2) unconstitutional and enjoining its future application. Associated General Contractors of California and various other California contractors and contracting associations have appealed from the portion of the district court's order granting only prospective injunctive relief.

1. As we stated in our Jurisdictional Statement in No. 77-1271, this case appears to be moot. The district court's order did not affect funds previously granted by the Secretary under the Public Works Employment Act of 1977, or any actions taken by the defendants with respect to those funds (J.S. App. No. 77-1078, at 39-40). At the time of the district court's decision, all funds authorized under the Act had been allocated (J.S. No. 77-1078, at 8), and all the contracts for the 65 projects in the Los Angeles area that were the subject of the suit have since been let in compliance with Section 103(f)(2). Accordingly, there is no apparent continuing controversy between the parties with respect to the subject matter of this action.

The Association's challenge to the district court's denial of retroactive injunctive relief does not cure the problem of mootness. If there are no further funds or contracts relating to the Los Angeles projects that would be affected by a decision concerning the operation of Section 103(f)(2), reversal of the district court's order denying in

part the Association's request for relief would have no effect on any continuing controversy between the parties. As we noted in our Jurisdictional Statement in No. 77-1271, pp. 7-8, there may be circumstances under which a controversy could be found still to exist in this case, but those circumstances are speculative and do not appear from the record. Accordingly, we suggest that the Court remand this case to the district court to determine whether it has become moot.

2. In our Jurisdictional Statement in No. 77-1271, we noted that the constitutional questions in this case are sufficiently related to those raised in *Regents of the University of California v. Bakke*, No. 76-811, that the Court may wish to hold this case pending the disposition of *Bakke*. In the alternative, if the Court determines that this case should not be remanded to the district court for consideration of the question of mootness, we have suggested that the Court note probable jurisdiction and set the case for argument on the constitutional and statutory questions raised by the district court's judgment. Even if the Court notes probable jurisdiction on the constitutional and statutory issues, however, it is not necessary to consider or decide the question of remedy that is raised by the Jurisdictional Statement in No. 77-1078. Cf. *Roe v. Wade*, 410 U.S. 113, 166; *Doe v. Bolton*, 410 U.S. 179, 201.

Respectfully submitted.

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MARCH 1978.

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